



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Mid-Atlantic Design & Graphics

File: B-276576

Date: July 1, 1997

Michael J. Moran, Esq., for the protester.

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DIGEST

Protest that agency used an unstated evaluation factor by considering the substantive contents of letters of recommendation concerning work performed by the offeror on prior contracts is denied where the solicitation required letters in order to assess offeror past performance.

DECISION

Mid-Atlantic Design & Graphics protests the award of contracts to Dale Schnackel Company, C.J. Schneider Engineering, and Dhillon Engineers, Inc. under request for proposals (RFP) No. DACA45-96-R-0031, issued by the Department of the Army, U.S. Corps of Engineers, Omaha District, for drafting services. Mid-Atlantic contends that the agency used unstated evaluation criteria in evaluating its letters of recommendation and that the proposal evaluation was biased.

We deny the protest.

The solicitation, issued July 26, 1996, contemplated the award of a maximum of three indefinite delivery contracts for a base year with a 1-year option. Delivery orders issued under the contracts were to include drafting services associated with architectural, sanitary, mechanical, electrical, and structural disciplines and required conventional and computer-aided drafting and design (CADD) technologies, including AutoCAD and Microstation requirements.

Offerors were to submit their proposals in three volumes. Volume I, the technical proposal, was to provide 10 samples of projects for architectural, civil, electrical, mechanical, sanitary and structural drafting completed within the last 5 years. Offerors were required to describe the nature of their responsibilities, the type of

contract, the firms' role as prime or subcontractor, the scope of work, and the extent to which CADD and conventional drafting services were utilized. Offerors were to list personnel and to provide personnel resumes, including experience in the different types and disciplines of drafting. Offerors were also to list the number of CADD workstations available, both AutoCAD and Microstation, and provide a description of their salient characteristics. Volume II was to contain past performance information. The RFP directed offerors to "provide at least three (3) performance evaluations and/or letters of recommendation on quality of work and compliance with schedules from previous clients. Work for which evaluation or letter is submitted must have been completed in the past ten (10) years." Volume III was for prices.

The RFP provided for awards to the responsible offerors whose offers were found most advantageous to the government considering, in descending order of importance, technical factors, past performance, and cost. The solicitation set forth three technical evaluation factors and listed various subfactors, with point ranges from acceptable to high, with a maximum possible technical point score of 1,020. Past performance, including the quality of work and compliance with performance schedules on past drafting services contracts as indicated by performance evaluations and/or letters of recommendation from previous clients, was also scored on an acceptable/high range of from 150 to 200 points.

The Army received 25 offers by the August 30 closing date. Volumes I and II of each proposal were point scored by the source selection board (SSB). Nineteen proposals, including Schnackel's, Schneider's, Dhillon's and Mid-Atlantic's, were considered technically acceptable and, after obtaining answers to certain questions from these offerors, the Army, by letter dated December 9, requested best and final offers (BAFO), of which 17 were received.

The scores of the four top-rated proposals, including Schnackel's and Schneider's, ranged from 94 percent to 96 percent of the maximum possible score, and these proposals were therefore judged essentially equal in technical ability and past performance. On the basis of their high scores and relatively low prices, Schnackel's and Schneider's proposals were selected for two of the three awards. Dhillon's proposal was the fifth highest technically rated at 91 percent of the maximum score. Dhillon offered the second lowest price, which was 23 percent lower than the highest technically rated offeror's. Because the highest technically rated proposal was significantly higher priced than the next three, the agency determined that its slightly greater technical ability and past performance did not warrant payment of the extra cost.

Mid-Atlantic's proposal, the sixth highest technically rated, received technical and past performance scores equal to 87 percent of the maximum score possible, 9 percent lower than the top-scoring firm and 4 percent lower than Dhillon's. Mid-Atlantic's price was only slightly lower than Dhillon's. The agency noted that half

of the point difference in the technical scores between the Dhillon and Mid-Atlantic proposals (30 out of 55 points) was in the most important area of experience. In addition, Mid-Atlantic's proposal received only an acceptable score--150 points--under past performance because Mid-Atlantic's letters of recommendation were generally silent regarding the type of drafting services the company had performed and the technologies it had employed.¹ The SSB determined that the greater technical ability and better past performance scores of Dhillon were worth the slightly higher associated cost. After the agency awarded contracts to Schnackel, Schneider and Dhillon, this protest followed.

Mid-Atlantic protests that the agency employed unstated evaluation criteria in the way it used the letters of recommendation to evaluate past performance, and contends that its proposal was improperly downgraded for lack of detail in its recommendation letters. Specifically, Mid-Atlantic argues that, contrary to the agency's evaluation criteria, nothing in the RFP required that the letters describe the nature of the contractual services for which the recommendation was written. The protester argues that if the agency intended to evaluate the letters with respect to the nature of the contractual services in them, the RFP requirement did not make what Mid-Atlantic calls this "subtle interpretation" clear and the agency should resolicit. The protester also takes the position that, because it submitted the required three recommendation letters, it is entitled to the maximum possible score under the past performance factor. We disagree.

Solicitations must identify all significant factors and any significant subfactors that will be considered in awarding the contract, and the evaluation of proposals must be based on the factors set forth in the solicitation. Federal Acquisition Regulation §§ 15.406-5(c), 15.605(d). While agencies are required to identify the major evaluation factors, they are not required to identify all areas of each factor which might be taken into account, provided that the unidentified areas are reasonably

¹The technical scores for the four relevant proposals were as follows:

	Schnackel	Schneider	Dhillon	Mid-Atlantic
Technical Score	970	960	945	915
Past Performance Score	190	190	175	150
TOTAL	1,160	1,150	1,120	1,065

related to or encompassed by the stated criteria. Cobra Technologies, Inc., B-272041; B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3; Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229 at 4. Here, the agency's consideration of whether or not the recommendation letters indicated the nature of the services provided and the types of technologies used on prior contracts is consistent with the past performance evaluation criterion, under which the reference letters were considered.

The RFP makes clear that the agency sought a drafting firm with sufficient specialized experience in three types and five disciplines of drafting services. While the solicitation did not explicitly outline the specific information that should be included in the recommendation letters, we view a clear statement as to the nature of services provided as intrinsically related to and encompassed by the past performance solicitation criterion, for which the letters were provided. See ORI Servs. Corp., B-261225, July 28, 1995, 95-2 CPD ¶ 55 at 2-4; Bioqual, Inc., B-259732.2; B-259732.3, May 15, 1995, 95-1 CPD ¶ 243 at 4.

Here, Mid-Atlantic provided five letters of recommendation,² but only one letter referred to either the type of drafting work performed by Mid-Atlantic or the technology used by the firm.³ None of the other letters indicated the type of drafting services performed or the technologies used. One letter simply stated that Mid-Atlantic had supplied scanning services, while another referenced "the preparation of electronic files from original drawings." One of the letters simply stated that the writer was pleased to recommend Mid-Atlantic and that he had been satisfied with Mid-Atlantic's work, without any explanation as to the type of work performed, the technologies used, or the performance timeframe.

In contrast, the recommendation letters supplied by the awardees were significantly more specific and detailed. For example, one recommendation letter on behalf of Schnackel states that the evaluation "reflects the Computer-Aided Drafting Design services" provided, another states that Schnackel had provided mechanical and electrical design services for the past 4 years, including CADD drafting services. Schnackel also provided an evaluation of its performance on one contract. Similarly, a letter of recommendation for Schneider references mechanical, electrical, architectural and structural design and engineering work, and another references mechanical and electrical engineering services. Dhillon's letters were not as detailed as Schnackel's or Schneider's and its score was therefore reduced,

²One of the letters stated that it was the policy of the agency not to write letters of recommendation. Instead, the letter merely provided the name of a reference who could be contacted concerning Mid-Atlantic's abilities and past history.

³This one letter referred to Mid-Atlantic's successful performance in providing computer-aided drafting support services.

but its proposal did receive 175 points under past performance, reflecting the fact that its recommendation letters referenced electrical engineering work and that Dhillon provided a performance evaluation and a copy of an award for outstanding architect-engineering services.

In our view, the agency properly considered the types/technologies of drafting services referenced in the recommendation letters and, because specifics were not provided in the protester's letters of recommendation concerning the services provided by Mid-Atlantic, the agency properly downgraded Mid-Atlantic's proposal under the past performance factor. Contrary to the protester's allegation, we find no ambiguity in the solicitation; a prudent offeror should have expected that the letters would be examined and evaluated with respect to the relevancy of the offerors' past performance to the services required. Mid-Atlantic's position that its mere submission of the required number of reference letters, irrespective of their content, required the agency to award its proposal the maximum possible score is, in our view, unreasonable.

The protester also argues that the awards were motivated by a geographical bias in favor of firms in or near Omaha. The protester asserts that Schnackel and Schneider are both located in Omaha and that Dhillon is located "across the river in Iowa." Mid-Atlantic also challenges a small number of points awarded to Schnackel's and Schneider's proposals as evidence of bias.

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Ameriko Maintenance Co., B-253274; B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121 at 5. Thus, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 4.

Here, there is no credible evidence of bias. Contrary to the protester's assertions, not all three awardees are located in or near Omaha. While Schnackel and Schneider are Omaha firms, Dhillon is located in Portland, Oregon. Moreover, the record shows that other firms located in or near Omaha did not receive awards. Two of these firms submitted proposals that received higher technical scores than those of the successful offerors but were not selected for award because of their high prices. If the agency were biased in favor of Omaha firms, one would expect it to have selected either of these firms rather than Dhillon, the firm from Oregon.

Moreover, the limited number of contested points that Mid-Atlantic views as evidence of bias are insignificant in relation to the overall evaluated point difference between Mid-Atlantic's proposal and the proposals whose scores it challenges. Even if Schnackel's and Schneider's scores were lowered to correct for any impropriety in the areas challenged (and Mid-Atlantic has not, in fact, established that any such impropriety occurred), it would have no impact on the relative technical rankings of the offerors. In any event, Mid-Atlantic has provided no credible evidence that any scoring errors, even if such occurred, resulted from bias.

The protest is denied.

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